

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSEN LLC :
Plaintiff, : Case No. 19-cv-6867
-against- : COMPLAINT
UNITED STATES CENTRAL COMMAND :
Defendant. :
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NATURE OF THE ACTION

1. Osen LLC brings this action against defendant United States Central Command (“CENTCOM”) to vindicate its right under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to obtain certain government records relating to terrorist attacks that occurred in Iraq between 2004 and 2011.

2. Osen LLC represents hundreds of U.S. service members killed or injured in terrorist attacks while serving in Iraq (the “Attacks”), along with members of their families. Osen LLC alleges that these Attacks were committed by Iranian-backed terrorists, and that Iran and its governmental and corporate enablers are responsible for its clients’ injuries. Osen LLC has brought several lawsuits on behalf of its clients against Iran and several Iranian and Western financial institutions that it alleges helped Iran fund, train, and otherwise support the terrorists who injured Osen LLC’s clients.

3. In each of these cases, Osen LLC’s clients must show that Iran was responsible for the attacks in which they were injured. To do so, Osen LLC’s clients will rely on military investigations conducted for each attack, the results of which are memorialized in various types of records maintained by or accessible to CENTCOM. For instance, these records show that attacks

were committed with weapons provided by Iran, or by terrorist groups that are known to act with Iran's support and/or under Iranian directives.

4. To obtain these records, from 2016 until the present, Osen LLC has made FOIA requests on behalf of each of its clients (the requests at issue here are referred to herein as the "Requests").

5. However, CENTCOM has yet to make any determinations as to which records responsive from the Requests it will produce and which it will withhold and the grounds therefor, passing the statutory 20-day limit for doing so.

6. This is the third time Osen LLC has been compelled to bring suit against CENTCOM in order to receive records to which Osen LLC has a statutory right. See *Osen LLC v. U.S. Central Command*, No. 17-cv-4457-KPF (S.D.N.Y.) ("CENTCOM I") and *Osen LLC v. U.S. Central Command*, No. 18-cv-6069-BCM (S.D.N.Y.) ("CENTCOM II").

JURISDICTION AND VENUE

7. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 28 U.S.C. § 1331.

8. Because CENTCOM failed to provide any determination as to the Requests, Osen LLC "may bring suit directly in federal district court without exhausting administrative appeal remedies." *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 182 (D.C. Cir. 2013).

9. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

10. Plaintiff Osen LLC is a law firm that primarily represents victims of international terrorism. Osen LLC has offices in Hackensack, New Jersey and New York, New York.

11. Defendant United States Central Command is a military department and sub-component of the Department of Defense, an agency within the meaning of 5 U.S.C. § 551(f)(1).

BACKGROUND

12. Osen LLC represents hundreds of American servicemembers and family members of American servicemembers who were killed or injured in alleged terrorist attacks while serving in Iraq. Each of these attacks was allegedly committed by terrorists who received material support from Iran.

13. Through its state terror apparatus, the Islamic Revolutionary Guard Corps (“IRGC”), and its Lebanese terror proxy, Hezbollah, Iran has cultivated, armed, trained, directed, and supported several terror proxies in Iraq, including certain Shi'a terror cells called “Special Groups” by the U.S. military. It has also provided material support to al Qaeda in Iraq (“AQI”), the predecessor of the Islamic State of Iraq and Syria (i.e., ISIS). Following the May 1, 2003 end of major combat operations in Iraq and the commencement of U.S. peacekeeping operations in Iraq under United Nations mandate, Iran increased its use of these proxies in carrying out attacks against U.S. and other allied forces and to foment sectarian violence in Iraq that served its strategic purposes.

14. Osen LLC has brought suits on behalf of these terror victims against Iran (*see, e.g.*, *Karcher v. Islamic Republic of Iran*, No. 16-cv-232 (CKK) (D.D.C.), several Iranian state-owned corporations that allegedly transferred Iranian funds benefitting terrorist groups (*see, e.g.*, *Hake v. Bank Markazi Jomhouri Islami Iran*, No. 17-cv-114 (TJK) (D.D.C.)), several Western banks that allegedly conspired with Iran to transfer dollar-denominated assets benefiting these terrorist groups (*see, e.g.*, *Freeman v. HSBC Holdings plc*, 14-cv-6601 (DLI)(CLP) (E.D.N.Y.)), and several Lebanese banks that allegedly provided financial services to Hezbollah (*see, e.g.*, *Bartlett v. Société Générale de Banque au Liban*, No. 19-cv-7 (CBA)(VMS) (E.D.N.Y.)).

15. In each of these suits, Osen LLC must prove that Iran and Hezbollah orchestrated the attacks and that Iran is therefore responsible for each terrorist attack in which its clients were injured.

16. Several kinds of evidence can show that an attack was committed by Iranian-backed terrorists. For example, Iran provided the Special Groups with sophisticated weapons with far more destructive power than the weapons terrorists in the region could otherwise acquire, including Explosively-Formed Penetrators (“EFPs”) and Improvised Rocket-Assisted Munitions (“IRAMs”). Other evidence may include U.S. military investigative findings attributing an attack to one of the (Iranian-backed) Special Groups.¹

17. This information is routinely collected by the U.S. military and memorialized in various types of records, each of which are in the custody or control of, maintained by, or accessible by CENTCOM. Sources of information and record types include:

- Significant Activity (“SIGACT”) reports—reports made following any military action involving lethal force or other significant activity.
- Combined Explosive Exploitation Cell (“CEXC”) reporting and analysis—CEXC was a combined military and law enforcement investigative and laboratory unit that investigated explosives used against Coalition forces in Iraq and Afghanistan.
- Explosive Ordnance Disposal (“EOD”) reports and storyboards: U.S. military EOD units analyze attacks involving explosives and generate investigatory records, including “storyboards,” describing the tactics, timing and geographical layout of each attack.
- Army AR 15-6 Investigations (“AR 15-6s”)—following the combat death of any servicemember, the Army conducts an investigation pursuant to Army Regulation 15-6. The investigation includes findings of facts based upon interviews with witnesses to the attack and review of multiple sources of information, including SIGACTs, EOD Storyboards, and other records available to CENTCOM, as described herein. Although Osen LLC also requests these records from the Army, on some occasions CENTCOM is able to locate AR 15-6s in its possession that the Army cannot locate.

¹ With respect to Iran’s material support to AQI, the most critical evidentiary issue is establishing that the attacks were perpetrated by AQI and not other Sunni extremist groups.

- The Combined Information Data Network Exchange (“CIDNE”—a database, accessible by CENTCOM, that includes military and security-related reporting and analysis on issues including terrorist attacks in Iraq.
- Other relevant reporting and investigative records, including, but not limited to, the following items (each of which have been referenced in or attached to AR 15-6s released by the Department of Defense): CIDNE Improvised Explosive Device (“IED”) reports, Medical Evacuation (“MEDEVAC”) Nine-Line transcripts, MEDEVAC Assault Support Requests (“ASR”), Composite Timeline reports, Serious Incident Reports (“SIR”), Weapons Intelligence Team Reports, Intelligence Directorate (C2) Operations Watch Highlights reports, Multi-National Division (“MND”)/Multi-National Corps—Iraq (“MNC—I”) IED/EFP Update reports, Reports of Casualty, Multi-National Force—Iraq (“MNF—I”) Battle Update Assessments (“BUA”) briefing slides, Activity Logs, and Defense Casualty Information Processing System—Forward (“DCIPS—CF”) reports.

18. Osen LLC requests these records by providing CENTCOM with as much information as possible. For instance, Osen LLC provides the name of the victim, his rank, his unit, the attack date, and the attack location. When possible, Osen LLC uses copies of relevant records published by WikiLeaks to provide additional information, such as the MGRS (Military Grid Reference System) coordinates of the attack, the unique CIDNE tracking number for each attack, and the unique CIDNE report key for each SIGACT report.

19. CENTCOM acknowledged most of the Requests with a letter within 20 days, but these were largely identical form letter responses.

20. These responses did not make specific determinations as to whether it would “comply with such request or not,” “the reasons therefor,” and whether or which exemptions it may claim, as required by FOIA. See 5 U.S.C. § 552(a)(6). Instead, they at most stated that CENTCOM will produce documents and claim exemptions over withheld documents in the future.

21. Osen LLC made these types of requests beginning in 2016. Requests made until approximately February 7, 2017 were part of *CENTCOM I*. Following the commencement of that suit, CENTCOM produced responsive records satisfactory to Osen LLC. *CENTCOM I* is closed, although CENTCOM has appealed the court’s decision rejecting some of the redactions

CENTCOM applied to the records pursuant to FOIA's national security exemption. *See* 5 U.S.C. § 552(b)(1).

22. Osen LLC's requests for these types of records made on or after February 7, 2017 are the subject of this Complaint (*CENTCOM II* related to records that, while relevant to Osen LLC's clients' claims, were not specific to the clients' attacks).

23. The requests at issue here are listed in Exhibit A. The exhibit constitutes a spreadsheet providing:

- The name of the victim for whom the Request was made (some victims appear more than once because they were in multiple attacks);
- The FOIA tracking number assigned by CENTCOM (where available) in their form response;
- The date(s) Osen LLC made a Request for that victim (in a few cases a Request was made twice);
- The date CENTCOM acknowledged receipt of the Request;
- The date of the attack at issue in the Request (two dates appear where victims were in multiple attacks but received one FOIA tracking number);
- Whether CENTCOM produced records relating to the attack at issue in the Request in *CENTCOM I* (indicated as "Yes"), but has still not produced victim-specific records, such as casualty reports.

24. Osen LLC has received no further substantive communications relating to the Requests, many of which are well over two years old.²

² In two cases, CENTCOM administratively closed requests because it did not receive privacy act releases from Osen LLC within 30 days. The closures have no basis under FOIA, which provides for withholding *specific* information on privacy grounds, *see* 5 U.S.C. § 552(b)(6), not closing entire requests. Moreover, as CENTCOM knows, most of the requested records do not include personal information about U.S. soldiers or include limited information that is easily redacted.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(For a Declaration that Osen LLC is Entitled to the Records Sought in Its Requests)

25. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

26. Upon information and belief, the records sought in Osen LLC's Requests are in the possession, custody and/or control of CENTCOM.

27. Upon information and belief, the records sought in Osen LLC's Requests are not subject to complete withholding under any of the exemptions from public disclosure set forth in 5 U.S.C. § 552(b), nor has CENTCOM identified any such exemption or any such affected documents.

28. Therefore, CENTCOM's failure to send Osen LLC copies of the records requested in its Requests violates Osen LLC's rights under 5 U.S.C. § 552.

29. Because CENTCOM has not made the necessary determinations as to Osen LLC's Requests as required under 5 U.S.C. § 552, Osen LLC's claims present an actual controversy within this Court's jurisdiction.

30. Osen LLC is thus entitled to a declaration that CENTCOM is obligated to provide it with copies of the records sought in Osen LLC's Requests.

SECOND CLAIM FOR RELIEF

(For an Injunction Compelling CENTCOM to Comply with Osen LLC's Requests)

31. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

32. As a result of the foregoing, Osen LLC is entitled to an injunction compelling CENTCOM to provide Osen LLC with copies of the records sought in its Requests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a. Accept jurisdiction over this action;
- b. Declare that Osen LLC is entitled to copies of the records sought in its Requests;
- c. Issue an injunction compelling CENTCOM to collect and give Osen LLC copies of the records requested in its Requests;
- d. Award Osen LLC reasonable attorney fees and other litigation costs under 5 U.S.C. § 552(a)(4)(E)(i)-(ii); and
- e. Grant other such and further relief as the Court deems just and proper.

Dated: New York, New York
July 23, 2019

OSEN LLC

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